



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10894071

Date: JUNE 9, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a sales manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy,

cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director further found that the proposed endeavor has substantial merit and, upon *de novo* review on appeal, we agree. However, the Director also concluded that the record does not establish the endeavor would have national importance.³ For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner is “currently employed in the U.S. as a [r]egional [s]ales [m]anager for . . . one of the largest suppliers of technology for the [] industry and a number of other [] industries.” The Petitioner stated that he “plan[s] to continue prospecting employment in the United States with U.S. companies in need of my unique expertise and extensive experience in sales management and engineering,” listing 20 “institutions in which I intend to pursue a job placement, as well as their current open positions.”

The Petitioner stated that his proposed endeavor would be “to utilize his skills and knowledge to work as a [s]ales [m]anager and make contributions of major significance to corporations here in the U.S.” The Petitioner elaborated that he would make contributions of major significance to corporations in the United States by doing the following:

- Direct and coordinate activities involving sales of manufactured products, services, commodities, real estate or other subjects of sale;
- Resolve customer complaints regarding sales and service;
- Review operational records and reports to project sales and determine profitability;
- Oversee regional and local sales managers and their staffs;
- Determine price schedules and discount rates;
- Prepare budgets and approve budget expenditures;
- Monitor customer preferences to determine focus of sales efforts;
- Plan and direct staffing, training, and performance evaluations to develop and control sales and service programs;
- Direct, coordinate, and review activities in sales and service accounting and record-keeping, and in receiving and shipping operations; and
- Direct foreign sales and service outlets of an organization.

In a request for evidence (RFE), the Director noted that, in the initial filing, “the [P]etitioner has not established that his proposed work has implications beyond his current employer (or any prospective employers), their business partners, alliances, and/or unidentified clients at a level sufficient to demonstrate the national importance of his endeavor.” The Director requested evidence of how the endeavor is of national importance, among other types of evidence requested.

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Director also concluded that the record did not satisfy the second and third *Dhanasar* prongs.

In response to the Director's RFE, the Petitioner noted the following:

I can also be a great mentor, coaching and training other sales professionals. I can share my experiences and knowledge of sales, business, and marketing. I can improve the performance, confidence, and practices of any sales team, by designing and implementing metrics to measure their program impact and effectiveness, and give feedback, so they can improve their activity, and therefore become more efficient in their day-to-day sales operations. This would maximize the performance of U.S. sales teams in order to manage global multimillion-dollar deals that require diverse cultural approaches.

The Petitioner further stated that he “will contribute to the U.S. economy, by increasing the sales and partnerships between companies all across the U.S. I will be able to improve cross-border transactions, and significantly increase revenues, which will effectively enhance the image of the U.S economy.”

Similar to the RFE, the Director concluded in the decision letter that the Petitioner “has not established that his proposed work as a sales manager has implications beyond his current employer (or any prospective employers), their business partners, alliances, and/or clients and customers at a level sufficient to demonstrate the national importance of his endeavor.”

On appeal, the Petitioner asserts that his “endeavor is not in any way limited to one particular corporation and their clients, but has a *much broader scope and breadth*” (emphasis original). The Petitioner states that his “endeavor is linked to supporting corporations, both big and small, adapting to innovative sales management solutions, to create and sustain businesses, which in turn, generate new demands of workforce, besides new revenue streams.” The Petitioner further asserts that “[b]usiness internal process/systems mainly get disseminated throughout the industry itself, through business events, symposia, conferences, the word of mouth, companies’ merging and acquisitions, new hiring of experts, private consultancy, etc., all of which contribute to a particular innovation and/or technologies getting spread and adopted by important players in the field.” The Petitioner also references a “steep shortage of U.S.-based, and specialized, sales professionals” and “the significant economic impact of his current work in the [redacted] industry in the United States.”

Dhanasar provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id* at 889-90.

The record does not establish any particular process the Petitioner would improve through the proposed endeavor, and how he would improve that process. The record also does not identify what or how the Petitioner would advance that would result in national or even global implications within a particular field, such as sales and marketing. Instead, for example, the Petitioner generally references business internal processes and systems that “get disseminated throughout [an] industry.”

While the Petitioner claims the endeavor will generate new revenue streams and a demand for additional workforce, the record lacks evidence supporting that statement. While generating sales is

a positive economic activity, the record does not specify what positive economic effects the proposed endeavor would cause, where the positive economic effects would be felt, whether that location is in an economically depressed area, and other salient details in order for us to determine whether those positive economic effects would be substantial enough to establish the national importance of the proposed endeavor.

In summation, the Petitioner has not established that the proposed endeavor has national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver.⁴ We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

⁴ Because we conclude that the record does not satisfy the first *Dhanasar* prong, which is dispositive, we need not address the Petitioner's further assertions on appeal regarding the second and third prongs.